

IN RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE - N/S of First Avenue, 200' W of the c/l of Baltimore Avenue 13th Election District 1st Councilmanic District Sharon Powell Petitioner

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 89-219-SPHA

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve as a building lot 5,108 sq.ft. in lieu of the required 6,000 sq.ft. that will not affect the overall density of the recorded subdivision in which the property is located, and a variance to permit a lot width of 50 feet in lieu of the required 55 feet, as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared and testified. Also appearing on behalf of the Petition was Nick Commodari, real estate representative and development consultant. There were no Protestants.

Testimony indicated that the subject property, known as Lots 7 and 8 of the "Plat of Section 1, Lansdowne," is zoned D.R. 5.5 and is currently unimproved. Petitioner purchased the subject property in June, 1988 with the intention of building a home; however, when she applied for a building permit she was advised that the lot did not meet area and width requirements. Ms. Powell testified that a number of the lots in the surrounding community are 40 feet wide. Testimony indicated the subdivision was originally filed in June 1989 and at that time consisted of lots 25 feet in width. Ms. Powell indicated the seller of the property owned several lots in this subdivision and had sold to three other individuals two 25-foot wide lots each as buildable lots. Ms. Powell argued that to

deny her request would result in practical difficulty and unreasonable hardship.

Petitioner seeks relief pursuant to Section 500.7 and from Section 1802.3.B, pursuant to Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.).

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

*Anderson v. Bd. of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974).

Section 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner and/or Deputy Zoning Commissioner shall have the power to create variances from an area regulation where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

In reviewing the Petition, it must be kept in mind that "[t]he standard for granting a variance... is... whether strict compliance with the regulations would result in 'practical difficulty or unreasonable

hardship;' and that it should be granted only if in strict harmony with the spirit and intent of the Zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." *McLean v. Soley*.

After due consideration of the testimony and evidence presented, it appears the Petitions for Special Hearing and Zoning Variance should be denied. A zoning variance is not and should not be granted simply because of the ignorance of a prospective buyer. The burden is upon the buyer to check the law. In the opinion of the Deputy Zoning Commissioner, the hardship and practical difficulty is self-created due to the fact that the predecessor in title had enough land to create a perfectly legal and buildable lot; however, he chose to sell only two lots thereby necessitating the requested variance. Petitioner purchased the two 25-foot wide lots in question containing only 5,108 sq.ft total which does not constitute a buildable lot in accordance with the zoning regulations. In the opinion of the Deputy Zoning Commissioner, both the Petitioners' predecessor in title and the Petitioner have created the hardship.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 19th day of December, 1988 that the Petition for Special Hearing to approve as a building lot 5,108 sq.ft. in lieu of the required 6,000 sq.ft. that will not affect the overall density of the recorded subdivision in which the property is located, and the Petition for Zoning Variance to permit a lot width of 50 feet in lieu of the re-

quired 55 feet, in accordance with Petitioner's Exhibit 1, be and are hereby DENIED.

ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

ANN:bjj

ORDER RECEIVED FOR FILING

Date 12/22/88 By [Signature]

ORDER RECEIVED FOR FILING

Date 12/22/88 By [Signature]

ORDER RECEIVED FOR FILING

Date 12/22/88 By [Signature]

ORDER RECEIVED FOR FILING

Date 12/22/88 By [Signature]

#### PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

the Petition for a building lot of 5,108 square feet in lieu of the required 6,000 and determine that this will not effect the overall density of the recorded subdivision

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

Legal Owner(s):

Sharon Powell

(Type or Print Name)

Signature

Address

City and State

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address

City and State

Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 19th day of Oct., 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of Dec., 1988, at 2 o'clock P.M.

J. Robert Haines  
Zoning Commissioner of Baltimore County.

Z.C.O.-No. 1

(over)

#### PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1802.3.B to permit a lot width of 50' in lieu of the required 55'.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

1. purchased lots 7 & 8 not realizing the minimum requirement of 55' for width, lot is only 50'

as prescribed by Zoning Regulations.

Variance advertising, posting, etc., upon filing of this petition be bound by the zoning regulations and restrictions of Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Sharon Powell

(Type or Print Name)

Signature

Address

City and State

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address

City and State

Phone No.

Attorney's Telephone No.:

ORDERED By The Zoning Commissioner of Baltimore County, this 19th day of Oct., 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of Dec., 1988, at 2 o'clock P.M.

J. Robert Haines  
Zoning Commissioner of Baltimore County.

ESTIMATED LENGTH OF HEARING 15 MIN. + 1 (over)  
AVAILABLE FOR HEARING MON./TUES./WED. - NEXT TWO WEEKS  
ALL OTHER DATE  
REVISED BY: [Signature] DATE: 12/22/88

#148

MALMUD & ASSOCIATES, INC.  
100 CHURCH LANE  
BALTIMORE, MARYLAND 21208

TELEPHONE (301) 653-9511

DESCRIPTION FOR ZONING VARIANCE  
LANSOWNE  
P.B. J.W.S. 1-49, LOTS 7 & 10  
BALTIMORE COUNTY, MARYLAND

Beginning for the same on the north side of First Avenue, 50 feet wide, at distance of 175 feet westerly from the corner formed by the intersection of the west side of Baltimore Avenue, 50 feet wide, and the north side of First Avenue, said point of beginning being at the line of division between Lot 8 and Lot 9 as shown on a plat entitled "Plat of Section One, Lansdowne" recorded among the Land Records of Baltimore County in Plat Book J.W.S. 1 at folio 49, thence binding on First Avenue:

- (1) North 89° 10' West 50 feet, thence leaving First Avenue and binding on the line of division between Lot 6 and Lot 7;
- (2) North 0° 50' East 101.2 feet, thence binding on the north outline of Lot 7 and Lot 8;
- (3) North 88° 41' East 50.04 feet, thence binding on the line of division between Lot 8 and Lot 9;
- (4) South 0° 50' West 103.1 feet to the place of beginning.

Containing 0.12 of an acre of land, more or less.

THIS DESCRIPTION IS FOR ZONING PURPOSES ONLY AND NOT FOR THE CONVEYANCE OF TITLE

Herbert Malmud  
Registered Land Surveyor  
Maryland No. 7558  
September 28, 1988

FILE: LANSOWNE SHARN 15

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
1727 Arlington Avenue  
Baltimore, Maryland 21204  
XXXXXXXX 887-3353  
J. Robert Haines  
Zoning Commissioner

December 27, 1988

Dennis F. Rasmussen  
County Executive

Ms. Sharon Powell  
1727 Arlington Avenue  
Baltimore, Maryland 21227

RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE  
N/S of First Avenue, 200' W of the c/l of Baltimore Avenue  
13th Election District - 1st Councilmanic District  
Sharon Powell - Petitioner  
Case No. 89-219-SPHA

Dear Ms. Powell:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Zoning Variance have been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Hadcliffe at 494-3391.

Very truly yours,

ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

ANN:bjj

cc: People's Counsel

File



